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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2041 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOPAL VASANTRAO KARKARE

Versus

MUNICIPAL CORPN OF BARODA

Appearance:

MR JIVANLAL G SHAH for Petitioner

MR PRANAV G DESAI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/12/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner before this Court is serving in

the Vadodara Municipal Corporation; the respondent no. 1 herein [hereinafter referred to as, `the Corporation']. The petitioner challenges the order dated 22nd/23rd September, 1994 whereunder he has been imposed a penalty of with-holding of two increments without future effect. The period of suspension from 3rd May, 1993 till his reinstatement in service has been treated as such.

The facts leading to the present petition are as under :-

It apperas that the petitioner and his wife Jayshreeben, both are serving in the Corporation. Said Jayshreeben was transferred to Ward No. 9. On 19th April, 1993, while the petitioner and his wife were going on a two wheeler, said Jayshreeben was riding as a pillion-rider. They met with an accident in which Jayshreeben was injured. Feeling enraged, the petitioner and said Jayshreeben in company of one Jasubhai Parikh entered the office of the Press Manager Shri Upadhyaya and picked-up a quarrel and abused Shri Upadhyay in presence of other officers of the Corporation. The said Press Manager was accused of having transferred the said Jayshreeben because of which she met with an accident. Upon complaint having been made by said Shri Upadhyay, the petitioner was suspended from service on 3rd May, 1993 and disciplinary action was initiated against him. After holding the inquiry, the Inquiry Officer opined that the imputation of charge made against the petitioner was not proved. The disciplinary authority, however, did not agree with the finding recorded by the Inquiry Officer and on 27th July, 1994, issued a notice calling upon the petitioner to show-cause why imputation of charge made against him shall not be held to have been proved and why he should not be visited with punishment of with-holding of two increments without future effect. The said notice was duly replied to by the petitioner. Under the impugned order, the penalty of with-holding of two increments without future effect has been imposed upon the petitioner. The period of suspension from service has been treated as such.

Mr. Shah has submitted that in view of the finding recorded by the Inquiry Officer, no further action was warranted against the petitioner and he could not have been visited with the punishment by the disciplinary authority.

I do not agree with the contention that the disciplinary authority could not have disagreed with the finding recorded by the Inquiry Officer and could not

have imposed penalty upon the petitioner. However, since the Inquiry Officer had recorded the finding in favour of the petitioner, the disciplinary authority was required to indicate why he did not agree with the said finding before he could impose penalty upon the petitioner. In the present case, the disciplinary authority has issued a notice upon the petitioner to show-cause why imputation of charge should not be held to have been proved. However, he has failed to give reasons why he did not agree with the finding recorded by the Inquiry Officer. It is well-settled proposition of law that in the event the disciplinary authority does not agree with the finding of the Inquiry Officer, the disciplinary authority must give reasons why he does not agree with such a finding. In the present case, the disciplinary authority has merely stated that he did not agree with the finding recorded by the Inquiry Officer. However, he has not narrated the reasons why he did not agree with such finding. Hence, it must be held that the petitioner had not been given fair opportunity to meet with the finding of guilt recorded by the Inquiry Officer. The principle of fair play has thus been violated and the impugned order of penalty cannot be sustained.

In view of the above facts, the petition is allowed. The impugned order dated 22nd/23rd September, 1994 [Annexure `G' to the petition] is quashed and set-aside. The Corporation shall be at liberty to hold the inquiry afresh from the stage of issuance of show-cause notice stating the reasons why the disciplinary authority did not agree with the finding recorded by the Inquiry Officer and to proceed further with the inquiry in accordance with law. However, if such an action is comtemplated, the same shall be initiated within a period of 12 weeks from today. In the event the Corporation fails to initiate action afresh; as aforesaid within a period of 12 weeks from today, it shall remit the amount of increments with-held to the petitioner and shall also treat the period of suspension as a period spent on duty and shall also remit the amount of difference of salary to the petitioner. The said exercise shall be completed within a period of four weeks from the date of completion of 12 weeks from today.

Rule is made absolute to the aforesaid extent. The parties shall bear their own costs. The registry shall send the writ forthwith.

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Prakash*